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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,386	12/28/1999	MARIO GUILLEN	BAL6019P0090	9922

7590

03/11/2002

ROCKEY MILNAMOW & KATZ LTD
TWO PRUDENTIAL PLAZA
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CHICAGO, IL 60601

EXAMINER

HWU, JUNE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 03/11/2002

93

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/473,386

Applicant(s)

GUILLEN, MARIO

Examiner

June Hwu

Art Unit

1661

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 February 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: Decision for petition of color photographs attached

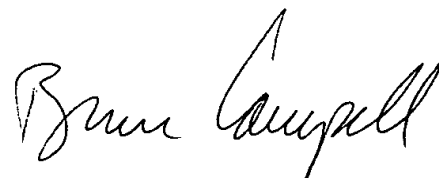
Continuation of 5. does NOT place the application in condition for allowance because:

1. The terminal disclaimer filed August 15, 2001 is not proper because the serial number of the application which forms the basis for the double patenting do not match the instant application.

2. Claims 23 and 24 remain rejected for reason stated in the previous Office action (paper number 9).

3. The amended claim 19 raises new 112 second paragraph issue. It is indefinite because it is unclear whether the interspecific impatiens plant is the 2245B or the progeny of 2245B.

4. Amended claim 19 raises new 112 first paragraph issue because the subject matter was not described in the specification to enable a person skilled in the art to make or use the invention. Applicant must deposit regenerable tissues of 2245B at a recognized depository. Claims 20-24 remains rejected under 112 first paragraph because it is dependent on amended claim 19. Applicant stated that the cultivar Balfusia (2245B) is commercially available to the public through Ball Flora Plant. Ball Flora Plant is not recognized under the Budapest Treaty. Applicant must deposit regenerable tissue of 2245B at a recognized depository. See MPEP 2405.



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